

APPEAL NO. 010414

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 11, 2001. With regard to the issues before her, the hearing officer decided that the appellant's (claimant) compensable _____, injury does not extend to include bilateral carpal tunnel syndrome (CTS); that the claimant did not crush his left hand when he crushed his right hand on _____; that the claimant did not have disability; that the first certification of maximum medical improvement (MMI) and impairment rating did not become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); that income benefits have not accrued; and that the claimant has not attained MMI by operation of law. The claimant appeals the hearing officer's determinations of the extent of injury, arguing that the evidence established that his injury extended to include bilateral CTS and a crush injury to his left hand. The respondent (carrier) replies that the claimant's appeal was untimely, and there was sufficient evidence to support the hearing officer's resolution of the extent-of-injury issues.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the parties on January 23, 2001. Rule 102.5(d), effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, which in this case would be January 28, 2000. The claimant does not state in his request for review when he received the decision of the hearing officer.

Under Section 410.202(a), an appeal, to be timely, must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

The last day for the claimant to timely file an appeal would have been Monday, February 12, 2001, and the last day for the appeal to have been timely received by the

Commission was Monday, February 20, 2001.¹ The envelope containing the claimant's appeal is postmarked February 16, 2001. The claimant's appeal was received by the Commission on February 23, 2001.² The claimant's appeal is untimely, having both been mailed after the 15-day deadline and received by the Commission after the 20-day deadline set by Rule 143.3(c).

The claimant's appeal being untimely, the decision and order of the hearing officer have become final. Section 410.169.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge

¹Since the 20th day fell was Saturday, February 17, 2001, the deadline for receipt would carry over to the next business day, which would have been Tuesday, February 20, 2001, as February 19, 2001, was President's Day, a holiday.

²We note that the cover letter accompanying the hearing officer's decision clearly stated the address to which an appeal should be sent, but that the claimant addressed the envelope containing his appeal to a prior Commission address. A yellow postal label on the envelope shows that the U.S. Post Office forwarded the appeal to the correct Commission address on February 21, 2001. See Texas Workers' Compensation Commission Appeal No. 010137, decided February 28, 2001.